

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 04-cr-30051-MJR
	)	
PHILIP COHN,	)	
	)	
Defendant.	)	

**MEMORANDUM and ORDER**

REAGAN, District Judge:

Under pre-*Booker* sentencing law,<sup>1</sup> district courts were required to notify the parties when contemplating a departure from the applicable guideline range, if that departure was based on a ground not identified in the presentence report (“PSR”) or the parties’ pre-sentencing hearing submissions. *See Burns v. United States*, 501 U.S. 129, 138-39 (1991).

Indeed, **FEDERAL RULE OF CRIMINAL PROCEDURE 32(h)** provides:

Before the court may depart from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party's prehearing submission, the court must give the parties reasonable notice that it is contemplating such a departure. The notice must specify any ground on which the court is contemplating a departure.

While the sentencing guidelines, post-*Booker*, are merely advisory, this Court still finds Rule 32’s notice-of-intent-to-depart provision consistent with due process and fundamental fairness.

Accordingly, Defendant Philip Cohn and the Government are **NOTIFIED** that the Court may vary upward from the applicable guideline range, in keeping with the Court’s obligation to fully consider all the factors delineated in **18 U.S.C. § 3553**. The potential upward departure is

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<sup>1</sup> *United States v. Booker*, -- U.S. --, 125 S.Ct. 738 (2005).

based upon the following grounds:

- (1) Defendant Cohn's conduct outlined in Paragraphs 74 and 75 of the PSR, which was not considered in the guideline computation;
- (2) Defendant Cohn's conduct outlined in Paragraph 77 of the PSR, which was not considered in the guideline computation; and
- (3) Defendant Cohn's conduct outlined in Paragraphs 78 through 80 of the PSR, which was not considered in the guideline computation.

Sentencing remains set on **Friday, May 20, 2005** but will commence at **9:30 am** rather than 10:00 am.

**DATED this 2<sup>nd</sup> day of May, 2005.**

**s/ Michael J. Reagan**  
**MICHAEL J. REAGAN**  
**United States District Judge**